

AMENDED IN ASSEMBLY JANUARY 4, 2012

AMENDED IN ASSEMBLY AUGUST 22, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

AMENDED IN ASSEMBLY MARCH 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 249

Introduced by Assembly Member Bill Berryhill

February 3, 2011

An act to amend Section 7031 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 249, as amended, Bill Berryhill. Contractors.

Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law prohibits a person, acting as a contractor, from bringing an action to collect compensation for performance of any act or contract requiring a license without alleging that he or she was licensed at all times during the performance of the act or contract, except as specified. Existing law authorizes a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of all compensation paid to the unlicensed contractor for performance of any act or contract.

~~This bill would authorize a person who utilizes those services for the construction or improvement of residential property, as specified, to recover 2 times the amount of compensation paid for work performed~~

during periods when the contractor was not duly licensed. It would also authorize a person who utilizes the services of a contractor for the construction or improvement of property other than specified residential property to bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the contractor for performance of any act or contract during the time the contractor was not properly licensed. The bill would authorize a contractor who was duly licensed with respect to a portion of work performed, as specified, to bring an action to recover compensation for that portion of the work *define an “unlicensed contractor,” for these purposes, as a person who has engaged in the business or acted in the capacity of a contractor and who has either never been licensed as a contractor under the Contractors’ State License Law or who performed an act or contract after his or her license was suspended pursuant to a disciplinary action.* The bill would state the intent of the Legislature in this regard.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7031 of the Business and Professions
- 2 Code is amended to read:
- 3 7031. (a) Except as provided in ~~subdivisions~~ *subdivision* (e),
- 4 ~~(g), and (h)~~, no person engaged in the business or acting in the
- 5 capacity of a contractor may bring or maintain any action, or
- 6 recover in law or equity in any action, in any court of this state for
- 7 the collection of compensation for the performance of any act or
- 8 contract where a license is required by this chapter without alleging
- 9 that he or she was a duly licensed contractor at all times during
- 10 the performance of that act or contract, regardless of the merits of
- 11 the cause of action brought by the person, except that this
- 12 prohibition shall not apply to contractors who are each individually
- 13 licensed under this chapter but who fail to comply with Section
- 14 7029.
- 15 ~~(b) Except as provided in subdivisions (e), (g), and (h):~~
- 16 ~~(1) A person that utilizes the services of an unlicensed contractor~~
- 17 ~~for the construction or improvement of residential property~~
- 18 ~~consisting of one to four units may bring an action in any court of~~
- 19 ~~competent jurisdiction in this state to recover two times the amount~~

1 of any compensation paid to the contractor for performance of any
2 act or contract.

3 (2)

4 (b) (1) A person that utilizes the services of a *an unlicensed*
5 contractor for the construction or improvement of property other
6 than residential property consisting of one to four units may bring
7 an action in any court of competent jurisdiction in this state to
8 recover all compensation paid to the *unlicensed* contractor for
9 performance of any act or contract that occurred at any time during
10 which the contractor did not possess a renewable license in
11 accordance with this chapter, or during which the contractor's
12 license was under suspension or expired.

13 (2) For purposes of this subdivision, "unlicensed contractor"
14 means a person who has engaged in the business or acted in the
15 capacity of a contractor and either of the following applies:

16 (A) The person has never been licensed as a contractor under
17 this chapter.

18 (B) The person was previously licensed as a contractor under
19 this chapter and performed an act or contract after his or her
20 license had been revoked or suspended pursuant to a disciplinary
21 action.

22 (c) A security interest taken to secure any payment for the
23 performance of any act or contract for which a license is required
24 by this chapter is unenforceable if the person performing the act
25 or contract was not a duly licensed contractor at all times during
26 the performance of the act or contract.

27 (d) If licensure or proper licensure is controverted, then proof
28 of licensure pursuant to this section shall be made by production
29 of a verified certificate of licensure from the Contractors' State
30 License Board which establishes that the individual or entity
31 bringing the action was duly licensed in the proper classification
32 of contractors at all times during the performance of any act or
33 contract covered by the action. Nothing in this subdivision shall
34 require any person or entity controverting licensure or proper
35 licensure to produce a verified certificate. When licensure or proper
36 licensure is controverted, the burden of proof to establish licensure
37 or proper licensure shall be on the licensee.

38 (e) The judicial doctrine of substantial compliance shall not
39 apply under this section where the person who engaged in the
40 business or acted in the capacity of a contractor has never been a

1 duly licensed contractor in this state. However, notwithstanding
2 subdivision (b) of Section 143, the court may determine that there
3 has been substantial compliance with licensure requirements under
4 this section if it is shown at an evidentiary hearing that the person
5 who engaged in the business or acted in the capacity of a contractor
6 (1) had been duly licensed as a contractor in this state prior to the
7 performance of the act or contract, (2) acted reasonably and in
8 good faith to maintain proper licensure, (3) did not know or
9 reasonably should not have known that he or she was not duly
10 licensed when performance of the act or contract commenced, and
11 (4) acted promptly and in good faith to reinstate his or her license
12 upon learning it was invalid.

13 (f) The exceptions to the prohibition against the application of
14 the judicial doctrine of substantial compliance found in subdivision
15 (e) shall apply to all contracts entered into on or after January 1,
16 1992, and to all actions or arbitrations arising therefrom, except
17 that the amendments to subdivisions (e) and (f) enacted during the
18 1994 portion of the 1993–94 Regular Session of the Legislature
19 shall not apply to either of the following:

20 (1) Any legal action or arbitration commenced prior to January
21 1, 1995, regardless of the date on which the parties entered into
22 the contract.

23 (2) Any legal action or arbitration commenced on or after
24 January 1, 1995, if the legal action or arbitration was commenced
25 prior to January 1, 1995, and was subsequently dismissed.

26 ~~(g) If the contractor was duly licensed upon commencement of~~
27 ~~an act or contract and reinstated a lapsed or suspended license prior~~
28 ~~to completion of the act or contract, the contractor may bring or~~
29 ~~maintain an action limited to recovery of compensation payable~~
30 ~~for any portion of the work performed during periods when the~~
31 ~~contractor was duly licensed. Any action authorized by subdivision~~
32 ~~(b) may seek recovery of compensation previously paid to the~~
33 ~~contractor only for that portion of the work performed during~~
34 ~~periods when the contractor was not duly licensed.~~

35 ~~(h) If the contractor was licensed during the performance of the~~
36 ~~act or contract but contracted for or performed work outside of his~~
37 ~~or her license classification, the contractor may bring or maintain~~
38 ~~an action limited to recovery of compensation payable for that~~
39 ~~portion of the work performed within the scope of work authorized~~
40 ~~by his or her license classification. Any action authorized by~~

1 ~~subdivision (b) may seek recovery of compensation previously~~
2 ~~paid to the contractor for that portion of the work performed that~~
3 ~~is not within the scope of work authorized by the contractor's~~
4 ~~license classification.~~

5 SEC. 2. It is the intent of the Legislature that amendments to
6 Section 7031 of the Business and Professions Code made by this
7 act shall affect only the rights of the parties to a contract to bring
8 a civil action under that section to recover compensation paid or
9 payable in connection with a work of improvement. This act shall
10 not be construed to limit or modify any civil action authorized to
11 be brought by the registrar of the Contractors' State License Board
12 or other law enforcement agency to enforce any provision of the
13 Contractors' State License Law.